IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9183 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FULSINGH DHANSINGH MAKWANA

Versus

DIST.EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 9183 of 2003

MR MUKESH R SHAH for Petitioner No. 1

MR MS RAO ASSTT GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/07/2003

ORAL JUDGEMENT

Heard learned advocate Mr.M.R.Shah on behalf of the petitioner and learned AGP Mr.M.S.Rao for respondent State Authorities.

#. Rule. Learned AGP Mr.Rao waives service of Rule on behalf of the respondents. With the consent of the learned advocates for the parties, this matter is taken up for final hearing today.

The short grievance of the petitioner that while dealing with Special Civil Application No.1133 / 2003 filed by the petitioner, wherein this Court [Coram : Justice Jayant Patel, J.] has passed order on date 13th February, 2003 after hearing the respective parties. However, while passing the orders, this Court has issued the following directions in para-2, which reads as under:

"2. Having heard Mr.M.R.Shah, learned Counsel appearing for the petitioner and Mr.Dabhi, learned AGP appearing for the District Education Officer, I am of the view that the present case is covered by the decision of this Court in SCA No.381/2003 and allied matters dated 20.1.2003 and, therefore, no elaborate discussion is required. The directions as given in the said decision shall also be made applicable in the present case in as much as the impugned order dated 20.1.2003 shall stand quashed and set aside on the ground of breach of principles of natural justice and the D.E.O. shall issue show cause notice to the petitioner and give opportunity of hearing to the petitioner and shall take decision in accordance with law as per the directions given in the aforesaid decision. The copy of the order passed in SCA No.381 / 2003 and allied matters shall also be taken on record for the purpose of giving opportunity of hearing and for the purpose of deciding the matter. Office shall send the copy of the order dated 20.1.2003 passed in SCA No.381 / 2003 and allied matters to the respondent for appropriate implementation of this order. Rule is made absolute accordingly. No Costs."

#. It may be noted that while passing the orders on 13th February, 2003, this Court has referred the order passed in Special Civil Application No.382 - 387 / 2003 dated 5th February, 2003. However, learned advocate Mr.M.R.Shah has submitted that there was some amendment in the number mentioned by the Court in respect of earlier order dated 13th February, 2003 but in fact, the Court has directed to the respondents to follow directions issued in common order passed in group matters

#. Therefore, the substance of the directions issued by this Court to the District Education Office that he has to first issue show cause notice to the petitioner within two weeks and the petitioner shall have to file reply within three weeks from the date of receipt of such notice and thereafter, hearing requires to be afforded by the District Education Officer to the petitioner and then the respondent District Education Officer shall have to pass the orders in accordance with law. Thus, these are the requirements and directions issued by this Court to the respondent. But the grievance of the present petitioner is that said directions have not been complied with strictly by the respondents.

#. Learned AGP Mr.M.S.Rao for the respondents submits that detailed reply has been filed by the respondent which is on record and according to the respondents, directions in substance have been complied with by the respondents. But from the information gathered by this Court from the learned AGP Mr.Rao, it transpires that after passing of the order on date 13th February, 2003, personal hearing was fixed on 22nd February, 2003 and on that date, the petitioner had remained personally present but the matter came to be adjourned to 28th February, 2003. Learned AGP Mr.Rao also submits that date was given in presence of the petitioner by the D.E.O. with instructions to remain personally present on the next adjourned date i.e. 28.2.2003 with all details and documents but on that date the petitioner had not remained personally present and that is how the District Education Officer has withheld the grant qua petitioner which is available to the school management and due to that order, the petitioner has not received salary for the month of June and July, 2003.

#. These are the facts on record, not in dispute between the parties. In light of this fact and considering the directions issued by this Court which require to be complied with by the respondent and accordingly, the respondent upon receipt of the copy of the order of this Court, has to issue show cause notice in respect of alleged misconduct or allegations made against the petitioner by the respondents calling upon explanation or defence from the petitioner within some reasonable time. After receiving the explanation or defence statement of the petitioner, the District Education Officer is required to fixe the matter for personal hearing of the petitioner and after completion of the hearing, it is the duty of the respondent to pass the order according to

law. This requirement and direction has not been complied with properly and there was some procedural lacuna and therefore, according to my opinion, the order withholding the grant by the D.E.O. qua petitioner and the resultant effect of non payment of salaries to the petitioner for the month of June / July, 2003, is required to be quashed and set aside.

#. In the result, present petition succeeds and the same is allowed accordingly. The order of withholding the grant qua the petitioner for the months of June/July,2003 is hereby quashed and set aside. It is further directed to the respondents to issue show cause notice to the petitioner within three weeks from the date of receipt of copy of this order, calling upon explanation from the petitioner in respect of alleged misconduct and the allegations made against him. However, it will be open for the petitioner to file any reply against the show cause notice, if so desire, within 15 days from the date of receiving the show cause notice. It is further directed to the respondents to afford personal hearing to the petitioner within three weeks from the date of receipt of such reply from the petitioner against such show cause notice and shall also intimate in writing to the petitioner as to every adjourned dates for personal hearing and after giving reasonable opportunity of hearing, to pass appropriate orders in accordance with law as per the directions issued by this Court referred to above, within three months thereafter on completion of personal hearing and shall also communicate to the petitioner the decision that may be taken by the respondent D.E.O. concerned. The respondents are also directed to pay the salary to the petitioner for the cause in question for the month of June / July, 2003 immediately without any delay.

However, it is observed that this Court has not made any observations nor expressed any opinion on the merits of the matter.

Rule is made absolute accordingly. No order as to costs.

Direct Service permitted to both the parties.

Date : 19.7.2003 [H.K.Rathod, J.]

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